

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

LENWARD P. HEBERT, ET AL

CIVIL ACTION NO. CV-03-1739-A

-vs-

JUDGE DRELL

SHERIFF RANDY MAXWELL, ET AL

MAGISTRATE JUDGE KIRK

R U L I N G

Before the Court is a Motion for Reconsideration on Behalf of Sheriff Randy Maxwell and Deputy Jim Boyd. (Doc. 75). Plaintiffs oppose the motion. (Doc. 77). Defendants request that the Court reconsider the issues of (1) official capacity claims; (2) Eighth Amendment right to post bail; and (3) conditions of confinement as addressed in its ruling dated September 30, 2005. The Court declines to do so.

The Court notes that Defendants have attempted an interlocutory appeal with the Fifth Circuit challenging portions of the Court's September 30, 2005 ruling. This appeal was filed concurrently with Defendants' Motion for Reconsideration. Even if the Court were inclined to grant Defendants' motion, the attempted appeal has stripped the Court of its jurisdiction to do so. Rather, "once the notice of appeal has been filed, while the district court may *consider* or *deny* a [motion for reconsideration], it no longer has jurisdiction to *grant* such a motion while the appeal is pending." Shepherd v. International Paper Co., 372 F.3d 326, 329 (5th Cir. 2004)(emphasis original).

Despite Defendants' assertions that the Court improperly "rendered a determination that Sheriff Maxwell was not credible" (Doc. 81), the Court did nothing of the sort. Rather, the Court granted Plaintiffs' Motion for Summary Judgment because Plaintiffs provided the Court with Mr. Hebert's uncontradicted testimony that he was denied bail as well as Deputy Cowen's testimony that Sheriff Maxwell had placed a hold on Mr. Hebert for nearly 48 hours. While Sheriff Maxwell claimed that he was without knowledge of the situation surrounding Mr. Hebert's request for bail, he never provided evidence refuting Mr. Hebert's or Deputy Cowen's deposition testimony. The Court, then, did not judge Sheriff Maxwell's credibility, but instead performed its proper function in determining whether Plaintiffs submitted sufficient evidence to prevail on a motion for summary judgment.

Therefore the Court DENIES the Defendants' Motion for Reconsideration.

Signed on this 26th day of October, 2005, at Alexandria, Louisiana

A handwritten signature in black ink, appearing to read 'Dee D. Drell', is written over a horizontal line.

Dee D. Drell
United States District Judge